

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2007-1559-LII-E   **TCEQ ID:** RN103484259   **CASE NO.:** 34731  
**RESPONDENT NAME:** Dornal L. Foust

Page 1 of 2

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> <b>1660 AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>
<input type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>	<input type="checkbox"/> <b>SHUTDOWN ORDER</b>	<input type="checkbox"/> <b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b>
<input type="checkbox"/> <b>AMENDED ORDER</b>	<input type="checkbox"/> <b>EMERGENCY ORDER</b>	
<b>CASE TYPE:</b>		
<input type="checkbox"/> <b>AIR</b>	<input type="checkbox"/> <b>MULTI-MEDIA (check all that apply)</b>	<input type="checkbox"/> <b>INDUSTRIAL AND HAZARDOUS WASTE</b>
<input type="checkbox"/> <b>PUBLIC WATER SUPPLY</b>	<input type="checkbox"/> <b>PETROLEUM STORAGE TANKS</b>	<input checked="" type="checkbox"/> <b>OCCUPATIONAL CERTIFICATION</b>
<input type="checkbox"/> <b>WATER QUALITY</b>	<input type="checkbox"/> <b>SEWAGE SLUDGE</b>	<input type="checkbox"/> <b>UNDERGROUND INJECTION CONTROL</b>
<input type="checkbox"/> <b>MUNICIPAL SOLID WASTE</b>	<input type="checkbox"/> <b>RADIOACTIVE WASTE</b>	<input type="checkbox"/> <b>DRY CLEANER REGISTRATION</b>
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 7019 Spoonbill Court, Arlington, Tarrant County</p> <p><b>TYPE OF OPERATION:</b> Landscape irrigator</p> <p><b>SMALL BUSINESS:</b>   <input checked="" type="checkbox"/> Yes   <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on March 17, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>     <b>TCEQ Attorney/SEP Coordinator:</b> None     <b>TCEQ Enforcement Coordinator:</b> Mr. Harvey Wilson, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-0321; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171     <b>Respondent:</b> Mr. Dornal L. Foust, P.O. Box 24001, Fort Worth, Texas 76124     <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> September 12, 2007</p> <p><b>Date of NOV/NOE Relating to this Case:</b> August 2, 2007 (NOV), September 20, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a routine record review. The violation was originally documented during a record review on August 1, 2007.</p> <p><b>WATER</b></p> <p>Failed to design an irrigation system, or portion thereof, so as to require the use of all component parts in a way which complies with the manufacturer's performance limitations for the part, unless the use is necessary to accommodate special site conditions. Specifically, the Respondent installed an irrigation system at 7019 Spoonbill Court, Arlington, Tarrant County, Texas which exceeded the manufacturer's performance limitations; that is, Zone #1 had 23 sprinkler heads connected to a 1 inch water line. Twenty-three heads would require a 33 gallons per minute ("gpm") flow but the Hazen-Williams Pressure Loss Charts indicated that the maximum flow for a 1 inch pipe is 17 gpm [30 TEX. ADMIN. CODE § 344.95(a)].</p>	<p><b>Total Assessed:</b> \$131</p> <p><b>Total Deferred:</b> \$26  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$105</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, begin designing and installing irrigation systems which meet the manufacturer's performance specification; and</p> <p>b. Within 15 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

Additional ID No(s): LI0009016



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision September 19, 2007

TCEQ

<b>DATES</b>	<b>Assigned</b>	24-Sep-2007	<b>Screening</b>	3-Oct-2007	<b>EPA Due</b>	
	<b>PCW</b>	4-Oct-2007				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Dornal L. Foust		
<b>Reg. Ent. Ref. No.</b>	RN103484259		
<b>Facility/Site Region</b>	4-Dallas/Fort Worth	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	34731	<b>No. of Violations</b>	1
<b>Docket No.</b>	2007-1559-LII-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Irrigators	<b>Enf. Coordinator</b>	Harvey Wilson
<b>Multi-Media</b>		<b>EC's Team</b>	EnforcementTeam 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$2,500

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$125
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	5% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$6
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**Notes** A 5% enhancement is recommended for having one NOV for the same type of violation within the past five years.

<b>Culpability</b>	No	0% Enhancement	<b>Subtotal 4</b>	\$0
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**Notes** The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply</b>	0% Reduction	<b>Subtotal 5</b>	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

**Notes** The Respondent does not meet the good faith criteria.

<b>0% Enhancement*</b>	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$4  
Approx. Cost of Compliance \$100  
\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$131
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## OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

<b>Final Penalty Amount</b>	
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## STATUTORY LIMIT ADJUSTMENT

<b>Final Assessed Penalty</b>	\$131
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## DEFERRAL

-20%

Reduction

Adjustment

\$26

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

**Notes**

Deferral offered for expedited settlement.

## PAYABLE PENALTY

\$105

Screening Date 3-Oct-2007

Docket No. 2007-1559-LII-E

PCW

Respondent Dornal L. Foust

Policy Revision 2 (September 2002)

Case ID No. 34731

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN103484259

Media [Statute] Irrigators

Enf. Coordinator Harvey Wilson

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance History Notes

A 5% enhancement is recommended for having one NOV for the same type of violation within the past five years.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 5%

<b>Screening Date</b> 3-Oct-2007	<b>Docket No.</b> 2007-1559-LII-E	<b>PCW</b>		
<b>Respondent</b> Dornal L. Foust	<small>Policy Revision 2 (September 2002)</small>			
<b>Case ID No.</b> 34731	<small>PCW Revision September 19, 2007</small>			
<b>Reg. Ent. Reference No.</b> RN103484259				
<b>Media [Statute]</b> Irrigators				
<b>Enf. Coordinator</b> Harvey Wilson				
<b>Violation Number</b> 1				
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 344.95(a)			
<b>Violation Description</b>	<p>Failed to design an irrigation system, or portion thereof, so as to require the use of all component parts in a way which complies with the manufacturer's performance limitations for the part, unless the use is necessary to accommodate special site conditions. Specifically, the Respondent installed an irrigation system at 7019 Spoonbill Court, Arlington, Tarrant County, Texas which exceeded the manufacturer's performance limitations; that is, Zone #1 had 23 sprinkler heads connected to a 1 inch water line. Twenty-three heads would require a 33 gallons per minute (gpm) flow but the Hazen-Williams Pressure Loss Charts indicated that the maximum flow for a 1 inch pipe is 17 gpm.</p>			
<b>Base Penalty</b>		\$2,500		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	<b>Harm</b>			
	Major	Moderate	Minor	
	Actual	Potential	Percent	
	x		5%	
<b>&gt;&gt; Programmatic Matrix</b>				
	Falsification	Major	Moderate	Minor
	x			0%
<b>Matrix Notes</b>	<p>Designing an irrigation system, or portion thereof, so as to require the use of any component part in a way that exceeds the manufacturer's performance limitations could result in inadequate water distribution which could result in minimal harm to the environment.</p>			
<b>Adjustment</b>		\$2,375		
			\$125	
<b>Violation Events</b>				
<b>Number of Violation Events</b>		1	<b>Number of violation days</b> 62	
<small>mark only one with an x</small>	daily		<b>Violation Base Penalty</b> \$125	
	monthly			
	quarterly			
	semiannual			
	annual			
	single event	x		
One single event is recommended.				
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b> \$4		<b>Violation Final Penalty Total</b> \$0		
		<b>This violation Final Assessed Penalty (adjusted for limits)</b> \$0		

## Economic Benefit Worksheet

Respondent Dornal L. Foust  
Case ID No. 34731  
Reg. Ent. Reference No. RN103484259  
Media Irrigators  
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	1-Aug-2007	15-May-2008	0.8	\$4	n/a	\$4

Notes for DELAYED costs

The estimated additional cost of designing and installing the irrigation system correctly. Date Required is the date the violation was originally documented. Final Date is the estimated date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$4

# Compliance History

Customer/Respondent/Owner-Operator:	CN602004210	FOUST, DORNAL L	Classification: N/A	Rating:
Regulated Entity:	RN103484259	FOUST, DORNAL L	Classification: N/A	Site Rating:
ID Number(s):	LANDSCAPE IRRIGATION LICENSING		LICENSE	LI0009016
Location:	5001 Mosson Road, Fort Worth, TX 76119-6474			
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	September 25, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	September 25, 2002 to September 25, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Harvey Wilson		Phone:	239-0321

## Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |
| 5. When did the change(s) in ownership occur?  | N/A |

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

N/A

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 08/02/2007 (564788)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 344, SubChapter F 344.95(a)

Description: Failure by a licensed irrigator to design an irrigation system, or portion thereof, so as to require the use of any component part in a way which exceeds the manufacturer's performance limitations for the part, unless the use is necessary to accommodate special site conditions.

Specifically, during a record review initiated on 08/01/07, it was documented that Mr. Dornal Foust, Landscape Irrigator License No. 9016, Lucky Sprinkler installed an irrigation system at 7019 Spoonbill Court, Arlington, TX76002

- F. Environmental audits.

N/A

- G. Type of environmental management systems (EMSs).

N/A

- H. Voluntary on-site compliance assessment dates.

N/A

- I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
DORNAL L. FOUST  
RN103484259**

**§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§ ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2007-1559-LII-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Dornal L. Foust ("the Respondent") under the authority of TEX. WATER CODE ch. 37 and TEX. OCCUPATIONS CODE ch. 1903. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a landscape irrigator business located at 5001 Mosson Road, Fort Worth, Tarrant County, Texas. The Respondent installed an irrigation system at 7019 Spoonbill Court, Arlington, Tarrant County, Texas.
2. TCEQ has general authority to regulate the design and installation of landscape irrigation systems, and the licensing of landscape irrigators and installers, pursuant to TEX. OCCUPATIONS CODE ch. 1903.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 25, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of One Hundred Thirty-One Dollars (\$131) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The



Respondent has paid One Hundred Five Dollars (\$105) of the administrative penalty and Twenty-Six Dollars (\$26) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require The Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As a licensed landscape irrigation systems installer, the Respondent is alleged to have failed to design an irrigation system, or portion thereof, so as to require the use of all component parts in a way which complies with the manufacturer's performance limitations for the part, unless the use is necessary to accommodate special site conditions, in violation of 30 TEX. ADMIN. CODE § 344.95(a), as documented during a record review conducted on September 12, 2007. Specifically, the Respondent installed an irrigation system at 7019 Spoonbill Court, Arlington, Tarrant County, Texas which exceeded the manufacturer's performance limitations; that is, Zone #1 had 23 sprinkler heads connected to a 1 inch water line. Twenty-three heads would require a 33 gallons per minute ("gpm") flow but the Hazen-Williams Pressure Loss Charts indicated that the maximum flow for a 1 inch pipe is 17 gpm.

## **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").



#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Dornal L. Foust, Docket No. 2007-1559-LII-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, begin designing and installing irrigation systems which meet the manufacturer's performance specification, in accordance with 30 TEX. ADMIN. CODE § 344; and
  - b. Within 15 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Manager, Regulatory Compliance Section  
Compliance Support Division, MC 178  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, Texas 78711-3087



3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.





## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

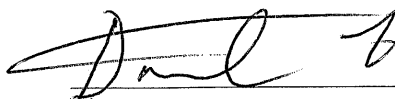
6/30/2008  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

6/05/08  
Date

DORNAL FOUST  
Name (Printed or typed)  
Authorized Representative of  
Dornal L. Foust

Pres.  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

